

In the Matter of )  
 )  
Six Unopposed Petitions for Determination of )  
Effective Competition )

## MEMORANDUM OPINION AND ORDER

**Adopted: May 15, 2014**

**Released: May 16, 2014**

By the Senior Deputy Chief, Policy Division, Media Bureau:

## I. INTRODUCTION AND BACKGROUND

1. By this Order, we grant six unopposed petitions for a finding of effective competition. The unopposed petitions set forth on Attachments A and B were filed by various cable companies (the “Petitioners”) seeking determinations of effective competition in their local franchise areas pursuant to Sections 76.7, 76.905(b)(1) and (2) and 76.907 of the Commission’s rules.<sup>1</sup> Most of the Petitioners allege that their cable systems are subject to effective competition in their local franchise areas (the “Attachment A Communities”) pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”) and Section 76.905(b)(2) of the Commission’s rules,<sup>2</sup> and are therefore exempt from cable rate regulation, principally because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc., and DISH Network. Some Petitioners claim to be exempt from cable rate regulation in their local franchise areas (the “Attachment B Communities”) pursuant to Section 623(l)(1)(A) of the Communications Act and Section 76.905(b)(1) of the Commission’s rules<sup>3</sup> because those petitioners serve fewer than 30 percent of the households in their franchise areas.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition<sup>4</sup> as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> For the reasons set forth below, we conclude that Petitioners have carried that burden. We grant these unopposed petitions based on our finding that Petitioners are subject to effective competition in the Communities listed on Attachments A and B.

## II. DISCUSSION

### A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(1)&(2), 76.907.

<sup>2</sup> 47 U.S.C. § 543(1)(1)(B); 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> 47 U.S.C. § 543(l)(1)(A); 47 C.F.R. § 76.905(b)(1).

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> 47 U.S.C. § 543(l); 47 C.F.R. § 76.905.

<sup>6</sup> 47 C.F.R. §§ 76.906, 76.907(b).

effective competition if its franchise area is (a) “served by at least two unaffiliated multichannel video programming distributors [(“MVPDs”)] each of which offers comparable video programming to at least 50 percent of the households in the franchise area,” and (b) “the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area.”<sup>7</sup> This test is referred to as the “competing provider” test.

4. We have reviewed each of the Attachment A petitions in full. We find that each petition provides sufficient and reliable evidence to establish that both elements of the competing provider test for effective competition are satisfied consistent with the Communications Act, our implementing rules, and over 20 years of effective competition adjudicatory precedent. Specifically, we find that each of the Attachment A Communities is served by at least two unaffiliated MVPDs each of which offers comparable video programming to at least 50 percent of the households in the franchise area. We further find that the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in each of the Attachment A Communities. Each of the Petitioners has demonstrated the presence of effective competition in their respective franchise areas. In so doing, Petitioners have satisfied their burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise areas.

#### **B. The Low Penetration Test**

5. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.”<sup>8</sup> This test is referred to as the “low penetration” test. Petitioners allege that they are subject to effective competition under the low penetration effective competition test because each serves fewer than 30 percent of the households in the Attachment B Communities.

6. We have reviewed each of the Attachment B petitions in full. We find that each petition provides sufficient and reliable evidence to establish that the low penetration test for effective competition is satisfied consistent with the Communications Act, our implementing rules, and over 20 years of effective competition adjudicatory precedent. Specifically, we find that each of the Petitioners serves fewer than 30 percent of the households in the Attachment B Communities. Each of the Petitioners has demonstrated the presence of effective competition in their respective franchise areas. In so doing, Petitioners have satisfied their burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise areas.

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<sup>7</sup> 47 U.S.C. § 543(l)(1)(B); 47 C.F.R. § 76.905(b)(2).

<sup>8</sup> 47 U.S.C. § 543(l)(1)(A); 47 C.F.R. § 76.905(b)(1).

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition set forth in Attachments A and B **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that any certification to regulate basic cable service rates granted to any of the Attachment A and B Communities **IS REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>9</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Senior Deputy Chief, Policy Division, Media Bureau

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<sup>9</sup> 47 C.F.R. § 0.283.

Attachment A  
Subject to Competing Provider Test

<b>Bright House Networks, LLC Proceedings and Communities</b>	<b>CUIDs</b>
<b>MB Docket 13-215, CSR-8826-E</b>	
Chattahoochee	FL0167
<b>Comcast Cable Communications, LLC Proceedings and Communities</b>	<b>CUIDS</b>
<b>MB 13-311, CSR 8860-E</b>	
Fruitland	MD0010
Pocomoke City	MD0031
<b>MB 13-312, CSR 8861-E</b>	
Fries	VA0030
Galax	VA0027
Hillsville	VA0133
Independence	VA0113
<b>MB Docket 14-30, CSR 8871-E</b>	
Beekman	NY1454
Brewster	NY1222
Carmel	NY1099
Kent	NY1200
Patterson	NY1028
Pawling (Town)	NY1054
Pawling (Village)	NY1055
<b>Cox Communications California, LLC Proceedings and Communities</b>	<b>CUIDS</b>
<b>MB Docket 14-32, CSR 8873-E</b>	
Santa Barbara City	CA0023
Santa Barbara County	CA1279
Goleta	CA1623
<b>Time Warner Cable Inc. Proceedings and Communities</b>	<b>CUIDS</b>
<b>MB Docket 14-41, CSR 8875-E</b>	
Briarwood	KY0590
Druid Hills	KY0455
Goose Creek	KY0495
Hollyvilla	KY0615
Hurstbourne Acres	KY0504

Kingsley	KY0379
Lincolnshire	KY0401
Norbourne Estates	KY0516
Old Brownsboro Place	KY0498
Richlawn	KY0454
Riverwood	KY0658
Strathmoor Village	KY0381
Wellington	KY0383

Attachment B  
Subject to Low Penetration Test

<b>Comcast Cable Communications, LLC Proceedings and Communities</b>	<b>CUIDs</b>
<b>MB Docket 13-312, CSR 8861-E</b>	
Carroll County	VA0135
Grayson County	VA0136